

MT LEGISLATIVE HISTORY

Chapter 818 1991

Bill H 691 S _____

Original bill & hist. ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 18 ✓ C

Hearing Date(s) Mar 14 ✓ C

_____ C

Mar 16 ✓ C

_____ C

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_____ C

Date Out Feb 18 ✓ C

Mar 16 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Note: Conference Committees were appointed
in both the House and the Senate.
Those minutes are unavailable.

3/07	2ND READING PASSED	93	3
3/09	3RD READING PASSED	88	6
	TRANSMITTED TO SENATE		
3/11	FIRST READING		
3/11	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
4/01	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	40	7
4/05	3RD READING CONCURRED	40	10
	RETURNED TO HOUSE		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 424		

EFFECTIVE DATE: 10/01/91

HB 691 INTRODUCED BY TOOLE, ET AL.

REMOVE GOVERNMENT IMMUNITY FOR ENVIRONMENTAL DAMAGE

2/08	INTRODUCED		
2/08	REFERRED TO JUDICIARY		
2/08	FIRST READING		
2/08	FISCAL NOTE REQUESTED		
2/14	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/18	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED		
2/25	2ND READING PASSED	58	41
2/26	3RD READING PASSED	60	39
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO JUDICIARY		
3/14	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	31	16
3/19	3RD READING CONCURRED	37	11
	RETURNED TO HOUSE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS NOT CONCURRED	63	26
3/23	CONFERENCE COMMITTEE APPOINTED		
4/25	CONFERENCE COMMITTEE REPORT NO. 1		
4/25	2ND READING CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	76	19
4/25	3RD READING CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	74	24
	SENATE		
3/28	CONFERENCE COMMITTEE APPOINTED		
4/25	CONFERENCE COMMITTEE REPORT NO. 1		
4/29	2ND READING CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	48	0
4/29	3RD READING CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	44	3
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 818		

EFFECTIVE DATE: 5/24/91

HB 692 INTRODUCED BY GOULD, ET AL.

SCHOOL OF PHARMACY ACCOUNT FROM INCREASED
PHARMACY-RELATED LICENSURE FEES

1 *HOUSE* BILL NO. *691*
 2 INTRODUCED BY *Rep. Steven Beck*
 3 *Rep. Sandy Whalen* *Rep. Dave Brown*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING GOVERNMENTAL
 5 ENTITY IMMUNITY FOR ACTIONS RESULTING IN ENVIRONMENTAL
 6 DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN
 7 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 8 PROVISION."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 **Section 1.** Section 2-9-111, MCA, is amended to read:
 12 "2-9-111. Immunity from suit for legislative acts and
 13 omissions. (1) As used in this section:
 14 (a) the term "governmental entity" includes the state,
 15 counties, municipalities, and school districts;
 16 (b) the term "legislative body" includes the
 17 legislature vested with legislative power by Article V of
 18 The Constitution of the State of Montana and any local
 19 governmental entity given legislative powers by statute,
 20 including school boards.
 21 (2) A governmental entity is immune from suit for an
 22 act or omission of its legislative body or a member,
 23 officer, or agent thereof.
 24 (3) A member, officer, or agent of a legislative body
 25 is immune from suit for damages arising from the lawful

1 discharge of an official duty associated with the
 2 introduction or consideration of legislation or action by
 3 the legislative body.
 4 (4) The immunity provided for in this section does not
 5 extend to:
 6 (a) any tort committed by the use of a motor vehicle,
 7 aircraft, or other means of transportation; or
 8 (b) any act or omission that results in or contributes
 9 to personal injury or property damage caused by
 10 contamination or other alteration of the physical, chemical,
 11 or biological properties of surface water, ground water,
 12 soil, or air."
 13 **NEW SECTION. Section 2. Retroactive applicability.**
 14 [This act] applies retroactively, within the meaning of
 15 1-2-109, to any governmental entity action authorized by
 16 2-9-111(4)(b). [This act] authorizes a party who had a cause
 17 of action against a governmental entity dismissed on the
 18 grounds of the previous immunity granted under that section
 19 to refile the action.
 20 **NEW SECTION. Section 3. Severability.** If a part of
 21 [this act] is invalid, all valid parts that are severable
 22 from the invalid part remain in effect. If a part of [this
 23 act] is invalid in one or more of its applications, the part
 24 remains in effect in all valid applications that are
 25 severable from the invalid applications.

LC 1051/01

1 NEW SECTION. **Section 4.** Effective date. [This act] is
2 effective on passage and approval.

-End-

DESCRIPTION OF PROPOSED LEGISLATION:

An act removing governmental entity immunity for actions resulting in environmental damage; amending section 2-9-111, MCA; and providing an immediate effective date and a retroactive applicability provision.

ASSUMPTIONS:

1. Governmental entity includes state, counties, municipalities and school districts.
2. The proposed legislation authorizes a party who had a cause of action against a government entity for environmental damages, which was dismissed on the ground of sovereign immunity, to refile the action.
3. The amount of potential actions and/or claims against the state or any of its political subdivisions for alleged environmental damage is unknown.

FISCAL IMPACT:

Undetermined.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposed legislation presents a potentially significant impact upon local governments. However, due to the lack of available information, the magnitude of potential impacts can not be determined.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

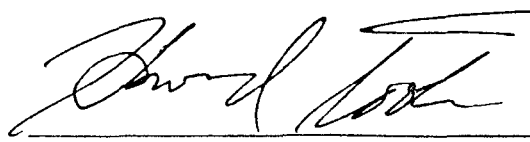
The retroactive provisions of the proposed legislation will significantly increase the exposure of governmental entities to claims for alleged environmental damage. Liability insurance and legal costs will increase.

TECHNICAL NOTE:

Article II, section 18, of the Constitution of Montana requires a 2/3 vote of each house of the legislature for any exception to immunity. HB0691 may require language pertaining to the super-majority required to pass the proposed amendments to 2-9-111, MCA.


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

2-13-91
DATE


HOWARD TOOLE, PRIMARY SPONSOR

2/15/91
DATE

Fiscal Note for HB0691, as introduced.

HB 691

CHAIRMAN--BILL STRIZICH
NORMAL SCHEDULE==> SITE: ROOM 312-2

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY--JEANNE DOMME

---BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES-----	COMMITTEE ACTION-----	REREFERRED TO COMM----	DATE OUT---
HB0631	2/06	2/13		PASS AS AMENDED		2/19
MCCULLOCH, SCOTT			MINIMUM SENTENCE RESTRICTIONS FOR SEXUAL OFFENSES INVOLVING PERSON UNDER 16			
HB0635	2/06	2/12		DO PASS		2/13
MEASURE, BRUCE			REVISE UNIFORM RIGHTS OF THE TERMINALLY ILL ACT			
HB0649	2/06					
SQUIRES, CAROLYN			AMENDING TEMPORARY RESTRAINING ORDER STATUTE TO INCLUDE VERBAL ABUSE			
HB0652	2/06	2/19		TABLED ON 02/22		
WHALEN, TIM			REVISE BAD FAITH SUITS AGAINST INSURERS			
HB0653	2/06	2/19		PASS AS AMENDED		2/22
WHALEN, TIM			REVISE LEGISLATIVE, JUDICIAL, AND PROSECUTORIAL IMMUNITY			
HB0668	2/08	2/19		PASS AS AMENDED		2/21
DARKO, PAULA			REVOCATION OF LICENSE MANDATORY FOR PERSONS UNDER 18 CONVICTED OF POSSESSION			
HB0673	2/07	2/12		ADVERSE RPT ADOPT		4/02
BROWN, DAVE			GENERALLY REVISE GAMBLING LAWS			
HB0675	2/07	2/20		DO PASS		2/22
SQUIRES, CAROLYN			ALLOW TRO TO ISSUE UPON THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY			
HB0676	2/07				HUMAN SERVICES	
FORRESTER, GARY			ESTABLISH A PROBLEM AND COMPULSIVE GAMBLING PROGRAM			
HB0691	2/08	2/18		DO PASS		2/19
TOOLE, HOWARD			REMOVE GOVERNMENT IMMUNITY FOR ENVIRONMENTAL DAMAGE			
HB0697	2/08	2/18		DO PASS		2/19

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 18, 1991,
at 7:13 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Diana Wyatt (D)

Members Excused: Rep. Brooke and Rep. Whalen

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 473

Motion: REP. TOOLE MOVED HB 473 DO PASS.

Discussion: REP. JOHNSON stated that if it isn't broken then the
committee shouldn't change it.

REP. TOOLE stated that the purpose of the bill is to deal with a
problem that is becoming more prevalent. He felt that the bill
was an effort by the people concerned about the problem.

Questions From Committee Members:none

Closing by Sponsor:

REP. MCCAFFREE stated that he hoped the committee will support this bill. He felt that the bill is something that is needed, particularly in the rural areas.

HEARING ON HB 691
REMOVING GOVERNMENT IMMUNITY FOR ENVIRONMENTAL DAMAGE

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this bill addresses the immunity problem for governmental actions in the state in a very limited way. "As you may know, approximately 2 years ago, the Montana Supreme Court found a provision of our statutes that found immunity for actions of governmental entities where no one really thought it existed." He stated that the courts agreed and the Montana Supreme Court began issuing decisions in this area. He stated that there have been a number of cases and in almost every case, without exception, the Supreme Court has said, no the city or county is not liable for this wrongful act because the legislature did not give up immunity. "For the last 2 years, the only entity that has been liable for negligence has been the University System." He felt that this is a small bill that addresses environmental damage. The statute that is involved is the government immunity statute.

Proponents' Testimony:

Carl Hatch, Attorney - Helena, stated that he is currently represents some clients whose well was contaminated by toxic waste flowing from a landfill district. "In the action that was brought, the case was dismissed from court of the basis of sovereign immunity. The acts of the managers of the landfill district are simply an agency relationship or an extension of the county commissioners and therefore, there is no cause of action taken upon this immunity." He felt that this statute will correct the situation and allow recovery for the kind of damage to homeowners whose ground water was polluted by those kinds of operations. Mr. Hatch urged the committee to pass this bill.

Joanne Newcomb, self, stated that she is a member of a loosely knit group called Citizens for Responsible Landfill. This group was formed 18 months ago. "When there is a groundwater contamination there is no one who is accountable for the wrong doing." She urged the passage of the bill so the responsible party will be held accountable for recovery of the damages incurred by homeowners.

Jim Jenson, Executive Director - Environmental Information

Center, stated that he wanted to re-enforce the importance of this legislation. He stated that throughout Montana a change is being made as to the way garbage is dealt with and that there are all types of potential problems associated with landfills. "One of those problems is the concern of people who are faced with a potential problem next door. Often times proposals by local governments to build these new landfills and people call our organization because they hope we can help them." He stated that in the cases that something does go wrong, the homeowners have no access to recovery. "We urge your do pass consideration."

Sue Neinjaiter, Montana Solid Waste Contractors, stated that the Montana Solid Waste Contractors are in support of HB 691.

Ted Doney, Mountain Water Company, stated that he represents the entity that owns and operates the private water system in Missoula. "We support this bill not because we intend to sue the city, but to encourage the city to move more rapidly and take care of problems in the future."

Michael Sherwood, Montana Trial Lawyers, stated that he didn't think this legislature intentionally did this to the people who have suffered the damages. "I think the Montana Supreme Court did this." He stated that in 1977 the legislature passed a law saying we are going to grant immunity to legislative acts. The courts somehow decided that legislative acts meant virtually anything a governmental body of powers did do. "We are in support of this bill and ask for your do pass consideration."

Steve Gross, Helena Farmer, stated that he is in support of HB 691 and asked the committee to give it a Do pass.

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:

REP. TOOLE stated that the bill addresses a problem that has been created by court decisions that fill the moat up around the castle. The moat was drained 15 years ago and the legislature said the castle should be as available and responsible as the people who lived outside of it. He felt that when the Supreme Court began the decisions, based upon the language that you see on the first page of the bill, it determined governments of all shapes were immune from all claims.

HEARING ON HB 581
ALLOW ALL LAW ENFORCEMENT AGENCIES TO
USE CERTAIN RECORDS OF YOUTHS

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated that this bill allows any law enforcement agency, within a judicial district, to use

resources through their continued criminal enterprise.

Proponents' Testimony:

Sgt. Larry Renman, Great Falls Police Department, stated that HB 276 is much needed legislation that deals with career criminals. He felt that career criminals were growing in population and were a great threat to Montanans. He stated that he was in support of HB 276 and asked the committee for a do pass consideration.

Barry Michelotti, Cascade County Sheriff and Coroner, gave written testimony in favor of HB 276. EXHIBIT 5

Patrick L. Paul, Cascade County Attorney, gave written testimony in favor of HB 276. EXHIBIT 6

Opponents' Testimony: none

Informational Testimony:

Dan Russell, Administrator - Division of Corrections, stated that it is very difficult to tell what the prison overcrowding would be from this bill. "These kind of offenders are not the kind of people who get prison sentences."

Questions From Committee Members: none

Closing by Sponsor: none

EXECUTIVE ACTION ON HB 697

Motion: REP. BROWN MOVED HB 697 DO PASS.

Discussion: REP. BOHARSKI asked if other courts send certified letters? John MacMaster said he doesn't think it has been a law for awhile.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 691

Motion: REP. BROWN MOVED HB 691 DO PASS.

Motion/Vote: REP. CLARK moved to amend HB 691 by striking section 2 from the bill. Motion fails.

Vote: Motion carried 16 to 4 with Rep's: Clark, Johnson, Boharski and Keller voting no.

EXECUTIVE ACTION ON HB 581

Motion: REP. GOULD MOVED HB 581 DO PASS. Motion carried

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR			✓
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN			✓
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 691 (first reading copy -- white) do pass.

Signed: 

Bill Strizich, Chairman

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary

COMMITTEE

BILL NO. HB#691

DATE 2-18-91

SPONSOR(S) Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Carl N. Hatch	Jim & Kathy Sanders	✓	
Jo Ann Harcourt	self	✓	
Steve Cross	SELF	✓	
Kirk Lawrence	Banisher	✓	
M. W. Lamer	"	✓	
Ted S. Dorey	Mountain Water Co.	✓	
Jim Jensen	MEIC	✓	
Olle Henningsen	MT Solid Waste MSEWC Contractors	✓	
Michael Sheppard	MTLA	✓	
Jeanne P. Chance, PE	MT Toole Council	✓ with amendment only	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) JUDICIARY

PAGE NBR..... 9
RUN TIME09:18
RUN DATE.... 05/20/91

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY--JOANN BIRD

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0631	2/27	3/22		CONCUR AS AMENDED		3/23
MCCULLOCH, SCOTT			MINIMUM SENTENCE RESTRICTIONS FOR SEXUAL OFFENSES INVOLVING PERSON UNDER 16			
HB0653	2/26	3/14		TABLED ON 03/16		
WHALEN, TIM			REVISE LEGISLATIVE, JUDICIAL, AND PROSECUTORIAL IMMUNITY			
HB0668	2/27	3/25		CONCUR	JUDICIARY	3/25
DARKO, PAULA			REVOCATION OF LICENSE MANDATORY FOR PERSONS UNDER 18 CONVICTED OF POSSESSION			
HB0668	3/25	3/25		CONCUR AS AMENDED		4/01
DARKO, PAULA			REVOCATION OF LICENSE MANDATORY FOR PERSONS UNDER 18 CONVICTED OF POSSESSION			
HB0675	2/26	3/13		CONCUR		3/13
SQUIRES, CAROLYN			ALLOW TRO TO ISSUE UPON THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY			
✓ HB0691	2/26	3/14		CONCUR AS AMENDED		3/16
TOOLE, HOWARD			REMOVE GOVERNMENT IMMUNITY FOR ENVIRONMENTAL DAMAGE			
HB0697	2/25	3/19		CONCUR		3/19
MCCAFFREE, ED			ALLOW JP & JUDGES OF COURTS OF LIMITED JURISDICTION TO SUMMON JURORS BY MAIL			
HB0735	3/07	3/12		TABLED ON 04/01		
MEASURE, BRUCE			REQUIRE INSURER TO REIMBURSE SPECIFIC CLAIMANTS FOR CERTAIN DAMAGES			
HB0741	2/25	3/18		CONCUR		3/18
CROMLEY, BRENT			REVISE NONPROFIT CORPORATION LAW			
HB0747	2/26	3/22		CONCUR AS AMENDED		4/01
LEE, THOMAS			PROVIDE ALTERNATIVES TO SENTENCING OFFENDERS TO THE STATE PRISON			
HB0752	3/21	4/16		CONCUR AS AMENDED		4/16
			ESTABLISH A PROCEDURE FOR SUMMARY MARRIAGE DISSOLUTION PROCEDURE ESTABLISHED			

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 14, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that Vice Chairman Yellowtail would act in his place during hearings this date.

HEARING ON HOUSE BILL 653

Presentation and Opening Statement by Sponsor:

Representative Tim Whalen, District 93, commented that although the Committee has heard and passed out HB 154 on legislative immunity, he sees a need to pass HB 653 and to make significant changes in Senator Nathe's bill. He cited Noni Linder's problem with the Missoula County Health Department, and said the approach needs to be more broad rather than more specific.

Representative Whalen said the idea of the bill is to get the Legislature back in control, where it should be, according to the Montana Constitution. He stated the Legislature needs to erase the board and to start over.

Representative Whalen told the Committee that, in the past two years, the Montana Supreme Court has interpreted statute on

Chairman Pinsoneault advised Representative Whalen that he could appreciate the feelings in this issue, and said he did not want to get at loggerheads and do nothing, as it would be a great disservice to the people of Montana. He commented that there needs to be an interim committee made up of some of the justices to study this matter.

Senator Svrcek commented that board members seem to be concerned with the trauma of suit to them.

Closing by Bill Sponsor:

Representative Whalen told the Committee he is addressing immunity as opposed to negligence. He said his purpose was not to get into a debate, and that although he agreed with Senator Pinsoneault's recommendation of an interim study, he still wants this bill to pass as a first step in getting away from the "mess we are in now".

HEARING ON HOUSE BILL 691

Presentation and Opening Statement by Sponsor:

Representative Howard Toole, District 60, said HB 691 is a more modest bill than HB 653 or SB 154. He explained that it addresses a more limited area, removing government immunity for actions in environmental decisions. Representative Toole stated it is similar to state immunity for motor vehicle damage in 2-9-111, MCA.

Representative Toole told the Committee he conceives the bill as a back-up to other bills, and that his purpose could be accomplished in either HB 653 or SB 154. He advised the Committee that HB 691 addresses a very serious problem, and explained that Missoula's city water supply was contaminated by a city sewer system. He asked the Committee to proceed with HB 691.

Proponents' Testimony:

Ted Darcy (?), Vice President and General Manager, Mountain Water Supply, Missoula, explained that one year ago a sewer station malfunctioned for four days near the largest water plant, and 60,000-80,000 gallons of sewage leaked out. He said the well was established in 1977, and the sewer contamination caused a loss of one-third of the water supply to the south side of Missoula.

Mr. Darcy explained that the sewer systems are supposed to have alarms and emergency back-up power. He said his company is now in litigation with the City of Missoula, and that he was advised this bill is necessary. Mr. Darcy said he believes governmental entities should have the same accountability his company has, and requested that the Committee pass HB 691.

Jim Jensen, Executive Director, Montana Environmental Information Center, said the door was slammed on Lewis and Clark County residents by the Supreme Court (Scratch Gravel Landfill ground water contamination case). He explained that a fire at the Landfill was flooded by millions of gallons of water which seeped into the water table. Mr. Jensen told the Committee that Carl Hatch, a Helena attorney represented those County residents, but Judge Sherlock dismissed the case. He stated that these people have no opportunity to get into their court.

Mike Sherwood, Montana Trial Lawyers Association, stated his support of HB 691, HB 653, and SB 154. He commented that HB 691 needs coordination instructions, but may not be necessary if HB 653 or HB 154 passes.

Jo Ann Newcomb, advised the Committee she resides at the northeast end of the Helena Valley, and represents more than 100 members of the Citizens for Responsible Landfill. She said the Citizens believed the Lewis and Clerk County Commissioners made a bad decision to put a landfill in their area, and that they could find no accountability on the part of the County after they determined a landfill would affect ground water in their area. Mrs. Newcomb commented that the Commissioners have ignored their questions, and said many people will be affected. She stated local government should be responsible for its decisions.

Opponents' Testimony:

Joanne Chance, told the Committee she was speaking as a Professional Engineer and Registered Sanitarian. She stated she would oppose the bill unless it is amended, and said her opposition was based on 15 years of professional experience in the area of hazardous waste and environmental sanitation.

Ms. Chance urged the Committee to specify negligent acts or omissions of the government. She said she feared chaos otherwise, as the bill doesn't recognize constraints of state and federal governments in working in this area. Ms. Chance stated she must approve or disprove 150 septic systems annually, and inspect and approve public establishments. She said she has been threatened with suits, and that one sanitarian had a death threat made against him which was investigated by the FBI.

Ms. Chance told the Committee that, as a sanitarian, she has found the courts to be overloaded at the county level. She said county attorney time is required to go to court. Ms. Chance stated that a vote for the bill is a vote for governmental inflexibility.

Jacqueline Terrell, American Insurance Association, said the Association has no position on legislative policy. She stated she is concerned, however, with unlimited retroactivity, and that insurance coverage be clarified in the bill.

Brett Dahl, Administrator, Tort Claims Division, Department of Administration, said he opposed the bill as its application is much broader than SB 154, but does understand the desire for relief. He stated the bill may result in the potential for damages against this legislative body, and urged them to carefully weigh the consequences of their actions. He advised the Committee that the state has no liability coverage right now as it is very expensive.

Questions From Committee Members:

Senator Towe asked Representative Toole if he intended to cover legislative acts, as well. Representative Toole replied he was trying to prevent the doors from closing on cause of action.

Senator Towe asked Representative Toole if he intended strict liability or not. Representative Toole replied he did not intend to effect any cause of actions, and that the bill says, "if the action for damages is otherwise not barred under 2-9-111, MCA".

Senator Mazurek asked if the Department of Health and Environmental Sciences ignored wood burning requirements, if someone with a health problem could then view this as a negligent act. Representative Toole replied he was saying the bill would not bar those kinds of actions from being pursued.

Closing by Sponsor:

Representative Toole commented that the language in the bill says what he wants it to say concerning negligence, but he would not object to new language inserted as subsection (b) in 2-9-111, MCA. He advised the Committee he would work with them and urged them to support the bill.

HEARING ON HOUSE BILL 420

Presentation and Opening Statement by Sponsor:

Representative Jim Rice, District 43, said HB 420 is a technical bill requested by the State Auditor, and would change the kind of immunity granted to persons compelled to testify in cases investigated by the Commissioner of Insurance. He explained that the bill defines what kinds of immunity are given to persons testifying for the prosecution. Representative Rice stated that, as it stands now, those testifying would have entire immunity and that is too broad. He advised the Committee that the bill suggests specific immunity for that area, and that this change would be consistent with immunity granted in securities law (amended in 1983).

Proponents' Testimony:

Susan Witte, Chief Legal Counsel, State Auditor/Commissioner of Securities and Insurance, read from prepared testimony

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 14 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe			

Each day attach to minutes.



CONFLUENCE SERVICES

6574 Canyon Ferry Rd., Helena, MT 59601
(406) 475-3029

Exhibit #3
14 Mar 91
HB 691

HB 691

MY NAME IS JOANNE CHANCE. AND I AM HERE AS A PROFESSIONAL ENGINEER, REGISTERED SANITARIAN, AND PRESIDENT OF MY OWN TWO PERSON ENVIRONMENTAL ENGINEERING CONSULTING FIRM TO SPEAK AS AN INDIVIDUAL IN STRONG OPPOSITION TO THIS BILL. MY REASONS, BASED ON PERSONAL PROFESSIONAL EXPERIENCE IN THE AREA OF ENVIRONMENTAL REGULATION ARE AS FOLLOWS.

I HAVE OVER 15 YEARS OF PROFESSIONAL EXPERIENCE AS A SUPERVISOR IN THE WASHINGTON STATE DEPARTMENT OF ECOLOGY, SUPERFUND PROGRAM, AS AN ENGINEER IN THEIR HAZARDOUS WASTE PROGRAM; AS A HAZARDOUS WASTE COMPLIANCE ENGINEER FOR THE BOEING COMPANY; AND AS THE HEAD OF THE ENVIRONMENTAL HEALTH DEPARTMENTS IN THREE RURAL COUNTIES IN MONTANA.

I CAN TESTIFY, WITHOUT ANY DOUBT IN MY MIND, THAT THIS BILL IS SO TECHNICALLY FLAWED AS TO BE UNWORKABLE. IT IS TECHNICALLY FLAWED BECAUSE IT DOES NOT RECOGNIZE THE CONSTRAINTS OF THE NATURAL ENVIRONMENT AND THE LIMITS OF THOSE PROFESSIONALS WHO WORK IN IT. I'M AFRAID THAT IT WAS CONCEIVED, PROBABLY WITH GOOD INTENTIONS TO TRY TO CORRECT SOME UNFORTUNATE ENVIRONMENTAL PROBLEMS. BUT IT IS A VERY BAD SOLUTION TO SELECTED PROBLEMS THAT WOULD BEST BE SOLVED BY OTHER MEANS.

Amend to
negligent
acts &
omissions

THIS PROPOSED SOLUTION WOULD GRIND WELL INTENDED, OVERBURDENED GOVERNMENTAL REGULATORY PROGRAMS TO A HALT BECAUSE IT SUBJECTS ALL GOVERNMENTAL OFFICIALS DOWN TO THE LOWLY COUNTY SANITARIAN AND THE FRONT LINE STATE EMPLOYEE TO PERSONAL FINANCIAL RUIN FOR EACH AND EVERY ONE OF THEIR ENVIRONMENTAL DECISIONS. IS THIS REALLY WHAT YOU WANT TO ACCOMPLISH?

→ That sound like the proponents would have a very strong case +

could get adequate compensation under a claim for negligent acts of government.

LET ME GIVE YOU PERSONAL EXAMPLES. I CURRENTLY HAVE A CONTRACT TO ACT AS THE SOLE ^{part time} COUNTY SANITARIAN IN TWO LARGE RURAL COUNTIES IN MT. ONE OF THEM IS GROWING AT A COMPARATIVELY FAST RATE. I AM REIMBURSED \$20,000 PER YEAR MINUS BUSINESS EXPENSES SUCH AS

Ex. #3

3-14-91

HB 691

TRANSPORTATION. I RECEIVE NO BENEFITS. MY JOB IS HIGHLY CONTROVERSIAL BECAUSE I MUST APPROVE OR DISAPPROVE OVER 150 SEPTIC SYSTEMS PER YEAR, APPROVE ALL DIVISIONS OF LAND UNDER 20 ACRES IN SIZE, AND INSPECT AND APPROVE ALL PUBLIC ESTABLISHMENTS. EVERY YEAR SEVERAL OF THE CITIZENS THAT I REGULATE THREATEN TO SUE ME AND I HAVE BEEN CURSED AT. I KNOW OF ANOTHER SANITARIAN WHO WAS BURNED IN EFFIGY AND RECEIVED A DEATH THREAT WHICH THE FBI INVESTIGATED BECAUSE OF HIS REGULATORY EFFORTS. AND WE ARE THE PEOPLE THAT THE SPONSORS AND PROPONENTS OF THIS BILL WISH TO ALSO HAVE PERSONALLY SUED. ERRORS AND OMISSIONS INSURANCE COSTS ABOUT \$12,000 PER YEAR, IF YOU CAN GET IT. I OBVIOUSLY CANNOT AFFORD TO CARRY IT FOR A CONTRACT THAT PAYS LESS THAN 20,000 PER YEAR. I WOULD BE FORCED OUT OF THE ENVIRONMENTAL FIELD, AS WOULD MANY OTHER PROFESSIONALS DUE TO INCREASED LIABILITY. IS THIS REALLY WHAT YOU WANT TO ACCOMPLISH?

ANOTHER MAJOR IMPACT OF THIS LEGISLATION WILL BE FELT DIRECTLY, AND OFTEN UNFAIRLY BY THE CITIZENS OF THIS STATE. AND THEY WILL OFTEN SUFFER SEVERE FINANCIAL IMPACT BECAUSE OF THIS BILL WITHOUT ANY REAL ENVIRONMENTAL OR PUBLIC HEALTH BENEFIT BEING GAINED. THAT'S THE TRAGEDY OF THIS BILL. IS THIS WHAT YOU REALLY WANT TO ACCOMPLISH WITH THIS BILL?

I'LL GIVE YOU AN EXAMPLE FROM AN ACTUAL CASE THAT I'VE HAD HERE IN MONTANA. AN INDIVIDUAL BUYS A LOT THAT HAS ALREADY BEEN APPROVED BY THE STATE DHES (SANITARY RESTRICTIONS HAVE BEEN REMOVED). HE BUILDS A GARAGE AND APPLIES FOR A SEPTIC SYSTEM PERMIT BEFORE STARTING HIS HOUSE CONSTRUCTION. I DO A SITE INSPECTION OF THE LOT AND FIND THAT A MISTAKE WAS MADE IN THE PAST. STATE AND COUNTY LAW REQUIRES THAT HIS DRAINFIELD BE LOCATED AT LEAST 100 FEET FROM A TINY LITTLE NEARBY CREEK. HE CAN ONLY MEET AN 80 FOOT SETBACK. UNDER CURRENT LAW, I "TAKE A RISK" AND WORK WITH THE OWNER TO GET A VARIANCE FROM THE COUNTY HEALTH BOARD TO ALLOW HIM TO BUILD ON HIS PROPERTY AND PLACE THE DRAINFIELD 20 FEET CLOSER TO THE CREEK. I DO THIS BECAUSE IT IS MY PROFESSIONAL JUDGEMENT THAT HIS DRAINFIELD WILL NOT DEGRADE THE STREAM OR JEAPORDIZE PUBLIC HEALTH AS LONG AS IT IS FUNCTIONALLY PROPERLY. IN ADDITION, THE FINANCIAL IMPACT UPON THIS INNOCENT CITIZEN WOULD BE HUGE IF HE WERE NOT ALLOWED TO BUILD HIS HOME. THE COUNTY HEALTH BOARD CONCURS.

IF THIS BILL BECOMES LAW, I WOULD BE A FOOL AND RISK FINANCIAL RUIN, AS WOULD EACH HEALTH BOARD MEMBER, AND THE COUNTY OFFICIALS AND COUNTY GOVERNMENT IF WE

Ex. 3

3-14-91

HB 691

WENT ON THE RECORD AS GRANTING HIM A VARIANCE. WE WOULD BE GIVING HIM PERMISSION TO VIOLATE VERY SPECIFIC STATE STANDARDS. THE NEIGHBORS, WHO ALREADY DIDN'T LIKE HIS GARAGE AND HAD COMPLAINED TO ME ABOUT THAT COULD NOW PERSONALLY SUE ALL OF US SHOULD HIS DRAINFIELD EVER FAIL AND DISCHARGE TO THE CREEK OR IF ELEVATED BACTERIA OR NITRATES WERE EVER MEASURED IN THE CREEK. HENCE, UNDER THIS BILL HE COULD NOT OBTAIN A CONVENTIONAL SEPTIC SYSTEM PERMIT FROM THE COUNTY BECAUSE WE WOULD FEAR FOR PERSONAL LIABILITY UNDER THIS BILL SHOULD IT BECOME LAW. I COULD GIVE YOU EXAMPLE AFTER EXAMPLE OF THIS SORT.

IN many cases 60% of officials/workers would be personally responsible for not being able to correct violators/violations due to lack of gov't funds.

BUT I WILL CLOSE BY SIMPLY SAYING THAT SHOULD THIS BILL BECOME LAW THAT I WILL RESIGN THESE DUTIES IN THE NEAR FUTURE. AND I THINK MANY OTHERS WILL FOLLOW. GOVERNMENT OFFICIALS WILL BECOME TOTALLY INFLEXIBLE AS THIS BILL REMOVES ALL ABILITY FOR THEM TO "TAKE THE RISK" AND MAKE A SOUND PROFESSIONAL DECISION THAT IS NOT TOTALLY "BY THE BUREAUCRATIC RULES. IF YOU VOTE FOR THIS BILL YOU ARE VOTING FOR GOVERNMENTAL INFLEXIBILITY AND HARDSHIP FOR ENVIRONMENTAL PROFESSIONALS, CITIZENS AND GOVERNMENTAL OFFICIALS. IS THAT REALLY WHAT YOU WANT TO DO?

** And this hardship will be incurred often without any environmental or public health benefit.*

Offer an amendment as a last resort to specify just negligent acts

Exhibit # 4a
14 Mar 91
HB 691

March 10, 1991

TESTIMONY IN OPPOSITION TO H.B. 691

My name is Brett Dahl, Administrator of the Tort Claims Division, Department of Administration. We defend state agencies and employees in lawsuits involving tort liability.

We oppose H.B. 691 which proposes to remove governmental immunity for legislative acts and omissions which result in or contribute to personal injury caused by environmental damage.

By way of a brief background, as I understand it, this bill is proposed in response to the dismissal of a lawsuit based on legislative immunity for an environmental tort.

While we understand the desire to provide relief for people who have suffered damage as a consequence of this specific environmental hazard and do not oppose the creation of an exception or a remedy for that situation, this bill goes well beyond that.

In its present form, H.B. 691 has broader application which may result in liability for the actions or inactions of this legislative body. The potential damages in environmental torts are immense.

It is impossible to predict when or if lawsuits will be brought against the legislature. We as a State, and you as a legislature have never benefitted from legislative immunity as a defense, because the legislature has never been sued for tort damages.

Our role in the hearing today is not to be 'Chicken little' and claim that 'the sky is falling'. It is simply to inform the legislature that under this bill, you as a body could be sued by plaintiffs for enacting or failing to enact legislation which will prevent, could have prevented, or will cause environmental damage.

We urge to carefully weigh the consequences of removing immunity for acts of this body.

The Tort Claims Division recommends that you do not pass H.B. 691.

DATE

14 Mar 91 1962

COMMITTEE ON

Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
Patricia England	Prof. + Occ. Learning	653		✓
John Hanson	MEIC	691	✓	
Jim Jensen	MEIC	691	✓	
David Rusoff	Human Rights Commission	653		✓
Drew Dawson	MT Dept Health	938	✓	
Fred J. Dorey	Mountain Water Co.	691	✓	
Arvid M. Hiller	Mountain Water Co.	691	✓	
Kathleen Fleury	Coordinator Indian Affairs - Bd of Pardons	653		✓
Robert J. Kelley	MT State Board of Pharmacy	653		✓
James C. Wilke	MT State Auditor / Ins. + Sec.	653		✓
RAIG THOMAS	BOARD OF PARDONS	653	✓	
		653		✓
James E. Preston	PRIVATE COUNSEL	653	✓	
Lee R. Kerr	Treasure County Atty	653	✓	
Fern Flanagan	Board of Dentistry	653		✓
STEVE MELOY	Dept of Comm	653		✓
Bill Granados	Tert Courts	653		✓
Lynn G. Ken	DFS	653		✓
STAN KALECYC	MT MUNICIPAL INS AUTH	653		✓
Robert T. Zander	Pub. Pub Assn	938	✓	
Brian Muzik	MEIC	691/653	✓	
Joanne C. Chang, PE	MT Tech Council	#B 653		✓
Joanne C. Chang, PE	Individual	#B 691		✓
Michael J. Sherwood	MTLA	HD 653	✓	
		HD 691	✓	
		HD 938	✓	
		HD 730	✓	
Lee Hansen	MLCT	HD 653		✓

DATE:

14 Mar 91

2d.

COMMITTEE ON

VISITORS' REGISTER

[illegible]

Recommendation and Vote:

Senator Halligan made a motion to TABLE HB 653. The motion carried with all members voting aye except Senators Yellowtail, Doherty, and Towe who voted no.

Senator Yellowtail asked that this issue be addressed during the interim. Chairman Pinsoneault replied he intends to submit a resolution for an interim study.

EXECUTIVE ACTION ON HOUSE BILL 691Motion:Discussion:Amendments, Discussion, and Votes:

Senator Towe made a motion to approve his amendments to HB 691 (Exhibit #7). The motion carried unanimously.

Senator Rye made a motion to approve Senator Pinsoneault's amendments (Exhibit #8). The motion carried unanimously.

Senator Grosfield asked about retroactive application to 1977.

Senator Towe made a motion to include committee language used in section 3 of SB 154 to cover Senator Grosfield's concerns. The motion carried with all members voting aye except Senator Crippen who voted no.

Recommendation and Vote:

Senator Towe made a motion that HB 691 BE CONCURRED IN AS AMENDED. The motion carried with all members voting aye, except Senator Grosfield who voted no.

EXECUTIVE ACTION ON HOUSE BILL 292Motion:Discussion:

Senator Halligan stated he was still concerned about certified copies for the court.

Amendments, Discussion, and Votes:

There were no amendments.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 16 Mar 99

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Amendments to House Bill No. 691
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 14, 1991

Ex #7
16 Mar
HB 6

1. Page 2, line 8.

Following: "omission"

Insert: ", other than an act or omission set forth in subsection
(2),"

2. Page 2, line 12.

Following: "air."

Insert: "This subsection (b) does not create a separate cause of
action."

Amendments to House Bill No. 691
Third Reading Copy (BLUE)

Requested by Senator Pinsoneault
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1991

1. Title, line 5.
Following: "FOR"
Insert: "NEGLIGENT"

2. Page 2, line 8.
Following: "any"
Insert: "negligent"

CA-8
16 Ma
HB 691

DATE 16 Mar 91 20%

DATE 16 Mar 11
COMMITTEE ON Senate Judiciary
VISITORS' REGISTER

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 691 (third reading copy -- blue), respectfully report that House Bill No. 691 be amended and as so amended be concurred in:

1. Title, line 5.

Following: "FOR"

Insert: "NEGLIGENT"

2. Page 2, line 8.

Following: "any"

Insert: "negligent"

Following: "omission"

Insert: ", other than an act or omission set forth in subsection (2)."

3. Page 2, line 12.

Following: "air."

Insert: "This subsection (b) does not create a separate cause of action."

4. Page 2, lines 13 through 19.

Strike: section 2 in its entirety

Insert: "NEW SECTION. Section 2. Coordination instruction. If House Bill No. 653 is passed and approved and if it repeals 2-9-111, then [section 1(4) of House Bill No. 653] is amended to read:

"(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water, ground water, soil, or air.""

5. Page 3, line 1.

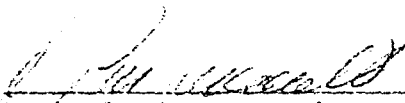
Following: "date"

Insert: "-- retroactive applicability"

6. Page 3, line 2.

Following: "approval"

Insert: "and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act]"

Signed: 
Richard Pinsonneault, Chairman

1991 3-16-91
Amg. Coord.

SR 3-16 11:30
Sec. of Senate

HOUSE BILL NO. 691

INTRODUCED BY TOOLE, MEASURE, BECKER, WATERMAN,
O'KEEFE, J. RICE, GRADY, WHALEN, D. BROWN, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING GOVERNMENTAL
ENTITY IMMUNITY FOR NEGLIGENT ACTIONS RESULTING IN
ENVIRONMENTAL DAMAGE; AMENDING SECTION 2-9-111, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and
omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state,
counties, municipalities, and school districts;

(b) the term "legislative body" includes the
legislature vested with legislative power by Article V of
The Constitution of the State of Montana and any local
governmental entity given legislative powers by statute,
including school boards.

(2) A governmental entity is immune from suit for an
act or omission of its legislative body or a member,
officer, or agent thereof.

(3) A member, officer, or agent of a legislative body

is immune from suit for damages arising from the lawful
discharge of an official duty associated with the
introduction or consideration of legislation or action by
the legislative body.

(4) The immunity provided for in this section does not
extend to:

(a) any tort committed by the use of a motor vehicle,
aircraft, or other means of transportation; or

(b) any NEGLIGENT act or omission, OTHER THAN AN ACT OR
OMISSION SET FORTH IN SUBSECTION (2), that results in or
contributes to personal injury or property damage caused by
contamination or other alteration of the physical, chemical,
or biological properties of surface water, ground water,
soil, or air. THIS SUBSECTION (B) DOES NOT CREATE A SEPARATE
CAUSE OF ACTION."

~~NEW SECTION. --Section 2-- Retroactive----applicability--
{This--act}--applies--retroactively,--within--the--meaning--of
2-9-109,--to--any--governmental--entity--action--authorized--by
2-9-111(4){b}--{This--act}--authorizes--a--party--who--had--a--cause
of--action--against--a--governmental--entity--dismissed--on--the
grounds--of--the--previous--immunity--granted--under--that--section
to--refile--the--action--~~

NEW SECTION. SECTION 2. COORDINATION INSTRUCTION. IF
HOUSE BILL NO. 653 IS PASSED AND APPROVED AND IF IT REPEALS
2-9-111, THEN [SECTION 1(4) OF HOUSE BILL NO. 653] IS

1 AMENDED TO READ:

2 "(4) THE IMMUNITY PROVIDED FOR IN THIS SECTION DOES NOT
3 EXTEND TO:

4 (A) NONLEGISLATIVE ACTIONS TAKEN BY A LEGISLATIVE BODY;
5 OR

6 (B) ANY ACT OR OMISSION THAT RESULTS IN OR CONTRIBUTES
7 TO PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY
8 CONTAMINATION OR OTHER ALTERATION OF THE PHYSICAL, CHEMICAL,
9 OR BIOLOGICAL PROPERTIES OF SURFACE WATER, GROUND WATER,
10 SOIL, OR AIR."

11 NEW SECTION. Section 3. Severability. If a part of
12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 severable from the invalid applications.

17 NEW SECTION. Section 4. Effective date -- RETROACTIVE
18 APPLICABILITY. [This act] is effective on passage and
19 approval AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF
20 1-2-109, TO CAUSES OF ACTION THAT HAVE NOT BEEN REDUCED TO
21 FINAL JUDGMENT ON OR BEFORE [THE EFFECTIVE DATE OF THIS
22 ACT].

-End-

4/25/91
3:05 PM
JSD

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 691 met and considered Senate committee on Judiciary amendments, dated March 16, 1991, and recommend that House Bill 691 (reference copy -- salmon) be amended as follows:

1. Title, line 6.
Strike: "NEGLIGENT"

2. Title, line 7.
Strike: "ENVIRONMENTAL"
Insert: "SURFACE WATER OR GROUND WATER"

3. Page 2, line 9.
Following: "any"
Strike: "NEGLIGENT"

4. Page 2, lines 9 and 10
Following: "omission" on line 9
Strike: remainder of line 9 through "(2)," on line 10

5. Page 2, line 13.
Following: "surface water"
Strike: "^L"
Insert: "Or"

6. Page 2, line 14.
Strike: "soil, or air"
Insert: "for which a cause of action exists in statutory or common law or at equity"

7. Page 2, line 14.
Following: "SEPARATE"
Insert: "or new"

8. Page 3, line 9.
Following: "SURFACE WATER"
Strike: "^L"
Insert: "Or"

9. Page 3, line 10.
Strike: "SOIL, OR AIR"
Insert: "for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action"

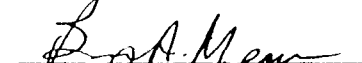
ADOPT

REJECT

And this Conference Committee report be adopted.

For the House:


Rep. Toole, Chair


Rep. Measure


Rep. R Johnson

For the Senate:


Sen. Pinsonneault, Chair


Sen. Doherty


Sen. Harp

CCR41
HB691

871108CC.HSF

871108CC.HSF



AN ACT REMOVING GOVERNMENTAL ENTITY IMMUNITY FOR ACTIONS RESULTING IN SURFACE WATER OR GROUND WATER DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to:

(a) any tort committed by the use of a motor vehicle,

aircraft, or other means of transportation; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action."

Section 2. Coordination instruction. If House Bill No. 653 is passed and approved and if it repeals 2-9-111, then [section 1(4) of House Bill No. 653] is amended to read:

"(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date -- retroactive applicability. [This

HB 0691

act) is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act].